

Exhibit 11

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Dey, Inc., et al.,
Civil Action No. 05-11084-PBS

Exhibit to the Memorandum In Support of United States' Motion To Exclude Certain Opinions
of W. David Bradford, PH.D

Dubberly, Jerry - December 15, 2008 08:51:00 a.m.

1:1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3 -----X
4 IN RE: PHARMACEUTICAL INDUSTRY)
5 AVERAGE WHOLESALE PRICE LITIGATION) MDL No. 1456
6 -----) Civil Action
7 THIS DOCUMENT RELATES TO:) No. 01-12257-PBS
8 United States of America, ex. rel.) Hon. Patti Saris
9 Ven-a-Care of the Florida Keys,)
10 Inc., v. Abbott Laboratories, Inc.,)
11 Civil Action No. 06-11337-PBS; and)
12 United States of America, ex. rel.) VIDEOTAPED
13 Ven-a-Care of the Florida Keys,) DEPOSITION OF
14 Inc., v. Dey, Inc., et. al., Civil) THE GEORGIA
15 Action No. 05-11084-PBS; and United) DEPARTMENT OF
16 States of America, ex. rel.) COMMUNITY HEALTH
17 Ven-a-Care of the Florida Keys,) by JERRY
18 Inc., v. Boehringer Ingleheim) DUBBERLY
19 Corp. et. al., Civil Action)
20 No. 07-10248-PBS.) DECEMBER 15, 2008
21 -----X
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2:1 VIDEOTAPED DEPOSITION OF
2 JERRY DUBBERLY
3
4 December 15, 2008
5 8:51 a.m.
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7 75 Spring Street, SW
8 600 U.S. Courthouse
9 Atlanta, Georgia
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11 Jennifer D. Hamon, CCR-B-2287, RPR
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39:1 effort across those pharmacists.

2 Q. Would it have been possible for the
3 pharmacy employees of the Georgia Medicaid
4 program to perform the services that were
5 delegated out to EDS, Express Scripts, or SXC?

6 A. No.

7 Q. Why not?

8 A. The enormity of administering the
9 pharmacy benefit is something that requires a
10 much larger group to -- to handle and systems and
11 infrastructure and call centers and et cetera.
12 So that's not something that we could do with
13 that -- that number of staff.

14 Q. Are you generally familiar with the
15 federal regulations regarding payments for
16 prescription drugs?

17 A. I am.

18 (Whereupon a document was
19 identified as Exhibit Georgia 002.)

20 Q. (By Mr. Lavine) Let me show you what
21 we've premarked as Georgia Exhibit 2, which is a
22 two-page document. On the top, it states:

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40:1 Federal Register/Volume 52, No. 147, dated July
2 31, 1987.

3 I'll just ask you to take a quick look
4 at that.

5 In particular, on the first page,
6 there's section 447.331, subparagraph b.

7 Do you see where there's two -- two
8 parts to subsection b there?

9 Item one states -- I should go back a
10 little bit.

11 The, "Payment levels that the agency
12 has determined by applying the lower of the --
13 (1) Estimated acquisition costs plus reasonable
14 dispensing fees established by the agency; or (2)
15 Providers' usual and customary charges to the
16 general public."

17 Are you generally familiar with that
18 language?

19 A. I am.

20 Q. And has the Georgia Medicaid program
21 established a reimbursement methodology that
22 applies to those requirements?

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41:1 A. Yes, we have.

2 Q. Can you just explain that a little bit.

3 A. The requirement is that the agency
4 develop their best estimate of the price
5 generally and currently paid by providers, as you
6 see.

7 We have a mechanism in place where the
8 reimbursement is the lower of or lesser of our
9 estimated acquisition cost, which is AWP minus 11
10 percent currently, or the providers' usual and
11 customary cost or the providers' submitted
12 ingredient cost plus their dispensing fee, or the
13 federal MAC or the state MAC or the -- or the
14 providers' most favored nation, or MFN, rate.

15 Then a dispensing fee applies for those
16 -- for, you know, each of those as well.

17 Q. Can you take a look also on -- on
18 Exhibit 2 -- I'm sorry -- yes.

19 Is that 2?

20 A. Yes.

21 Q. Exhibit 2, 447.301, the definition of
22 "estimated acquisition cost."

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42:1 A. Okay.

2 Q. "'Estimated acquisition cost' means the
3 agency's best estimate of the price generally and
4 currently paid by providers for a drug marketed
5 or sold by a particular manufacturer," do you see
6 that language?

7 A. I do.

8 Q. Has the Georgia Medicaid program also
9 attempted to determine estimated acquisition
10 costs in accordance with that definition?

11 A. We have.

12 Q. And that's consistent with the -- the
13 general approach you described just a moment ago?

14 A. It is.

15 Q. In order to qualify for federal
16 Medicaid funding, does your state need to have a
17 state plan that's approved by the federal
18 government?

19 A. Yes, we do.

20 Q. Does that get amended from time to
21 time?

22 A. It does.

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43:1 Q. Does the state plan and its amendments
2 have provisions that describe the methodology for
3 the reimbursement of drugs by Georgia Medicaid?

4 A. It does.

5 Q. And does the Georgia Medicaid program
6 run the pharmaceutical program in accordance with
7 the state plan?

8 A. We do.

9 (Whereupon a document was
10 identified as Exhibit Georgia 003.)

11 Q. (By Mr. Lavine) Let me show you
12 Exhibit 3. It's a composite. The first page has
13 a date stamp at the top of November of 1987.

14 Do you see at the very top of the first
15 page it states: Attachment 4.19-B, page 2,
16 State, Georgia?

17 Do you recognize this document?

18 A. I do.

19 Q. What is it?

20 A. It's the page from the state plan that
21 describes reimbursement of prescribed drugs.

22 Q. And what is the time frame for this